

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LORETTA S. BELARDO, ANGELA) TUITT-SMITH, BERNARD A. SMITH,) YVETTE ROSS-EDWARDS, AVON) CANNONIER, ANASTASIA M.) DOWARD, DARYL RICHARDS,) EVERTON BRADSHAW, RODELIQUE) WILLIAMS-BRADSHAW, PAMELA) GREENIDGE and WINSTON) GREENIDGE, on behalf of themselves) and all others similarly situated,) Plaintiffs,) v.) BANK OF NOVA SCOTIA,) Defendant.)	2018-CV-8 CLASS ACTION
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PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY BRIEF

Pursuant to LRCi 7.1(a), plaintiffs move for leave to file a surreply brief to present newly discovered evidence that rebuts the central argument made in Scotiabank's reply brief and confirms the truth of the allegations in the First Amended Complaint. The new evidence is a lawsuit filed against Scotiabank by its own force-placed insurer, Integrand. The lawsuit directly contradicts Scotiabank's argument that it obtained force-placed insurance for plaintiffs' properties before Hurricanes Irma and Maria.

Local Rule 7.1(a) provides that parties may submit additional papers after briefing is complete only with the court's approval. LRCi 7.1(a). A court may grant leave to file a surreply to permit the moving party to submit newly discovered evidence. *See In re Jolly Roger Cruises & Tours, S.A.*, 2011 WL 1467172, at *2 (S.D. Fla. Apr. 18, 2011) (granting leave to file surreply based on newly discovered evidence).

Scotiabank's reply brief in support of its motion to dismiss argues that its

January 30, 2018 letter to its borrowers proves that Scotiabank had obtained force-placed insurance for plaintiffs' properties before Hurricanes Irma and Maria. But plaintiffs have recently discovered evidence that shows that the representations in Scotiabank's letter are flat-out false. The new evidence is a declaratory relief action filed against Scotiabank by its force-placed insurer, Integrand Assurance Co., in the Superior Court of Puerto Rico entitled *Integrand Assurance Co. v. Scotiabank of Puerto Rico, Inc., and Bank of Nova Scotia*, Civ. No. SJ2018CV01442 (P.R. Super. Ct. April 19, 2018).¹

In the lawsuit, Integrand alleges that Scotiabank failed to obtain force-placed insurance for Scotiabank's Virgin Islands properties before Hurricanes Irma and Maria and then unsuccessfully attempted to retroactively obtain insurance from Integrand to cover losses caused by the hurricanes. The lawsuit confirms the truth of the allegations in the FAC, exposes Scotiabank's massive fraud perpetrated on its borrowers, and puts the lie to arguments contained in Scotiabank's reply brief. It leaves no doubt that Scotiabank's motion to dismiss should be denied.

Plaintiffs did not learn about the Integrand lawsuit until after the filing of their opposition brief. Therefore, the Integrand lawsuit constitutes newly discovered evidence that supports the filing of a surreply brief.

¹ In ruling on a motion to dismiss, a court may consider matters of which judicial notice may be taken, even if the corresponding documents are not attached to or incorporated by reference in the complaint. *Leonard F. v. Israel Discount Bank of New York*, 199 F.3d 99, 107 (2d Cir. 1999). Under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986). The Integrand lawsuit is a matter of public record.

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DATED: August 17, 2018

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2018, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System, which will send a notification of such filing (NEF) to the following:

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